

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

MICROSPHERIX LLC,

Plaintiff,

v.

MERCK SHARP & DOHME  
CORP., MERCK SHARP &  
DOHME B.V., AND ORGANON  
USA, INC.,

Defendants.

Civil Action No. 2:17-cv-03984

(CCC/MF)

JURY TRIAL DEMANDED

*Electronically Filed*

**DECLARATION OF ANDREW P. BLYTHE IN SUPPORT OF  
DEFENDANTS MERCK SHARP & DOHME CORP., MERCK SHARP &  
DOHME B.V. AND ORGANON USA, INC.'S  
OPENING CLAIM CONSTRUCTION BRIEF**

I, Andrew P. Blythe, hereby declare as follows:

1. I am an associate at the law firm of Gibson, Dunn and Crutcher LLP and represent Defendants Merck Sharp & Dohme Corp., Merck Sharp & Dohme B.V. and Organon USA, Inc. in the above-captioned action. I am a member in good standing of the States of California and New York, and have been admitted *pro hac vice* to appear in this case. The facts set forth herein are true and correct to the best of my own personal knowledge. If called upon to testify as a witness, I could and would competently testify thereto.
2. Attached as Exhibit 1 to this Declaration is a true and correct copy of excerpts from the 19th edition of Taber's Cyclopedic Medical Dictionary (2001) and bearing the bates range MRK\_00344579–585.
3. Attached as Exhibit 2 to this Declaration is a true and correct copy of U.S. Patent No. 5,938,583 to Grimm, issued August 17, 1999.
4. Attached as Exhibit 3 to this Declaration is a true and correct copy of U.S. Provisional Appl. No. 60/249,128, filed November 16, 2000.
5. Attached as Exhibit 4 to this Declaration is a true and correct copy of U.S. Provisional Appl. No. 60/412,050, filed September 19, 2002.
6. Attached as Exhibit 5 to this Declaration is a true and correct copy of the Final Written Decision in IPR2018-00393 (Paper 43), dated July 8, 2019.

7. Attached as Exhibit 6 to this Declaration is a true and correct copy of excerpts of Plaintiff Micropherix LLC's ("Microspherix") Rebuttal Claim Construction Evidence, which was served on counsel of record on September 1, 2020.

8. Attached as Exhibit 7 to this Declaration is a true and correct copy of the oral argument transcript for the January 12, 2012 hearing before the PTAB from the prosecution file of U.S. Patent Appl. No. 10/852,407.

9. Attached as Exhibit 8 to this Declaration is a true and correct copy of excerpts from the 27th Edition of Stedman's Medical Dictionary (2000) and bearing the bates range MRK\_00344531–535.

10. Attached as Exhibit 9 to this Declaration is a true and correct copy of excerpts from the Revised Edition of Merriam-Webster's Medical Desk Dictionary (2002) and bearing the bates range MRK\_00344589–600.

11. Attached as Exhibit 10 to this Declaration is a true and correct copy of excerpts from the 6th Edition of Mosby's Medical Dictionary (2002) and bearing the bates range MRK\_00344625–631.

12. Attached as Exhibit 11 to this Declaration is a true and correct copy of the article titled "New prospects for luteinizing hormone releasing hormone as a contraceptive and therapeutic agent" by H M Fraser, dated October 9, 1982 and bearing the bates range MRK\_00344623–624.

13. Attached as Exhibit 12 to this Declaration is a true and correct copy of excerpts from Webster's II New College Dictionary (1999) and bearing the bates range MRK\_00344561–565.

14. Attached as Exhibit 13 to this Declaration is a true and correct copy of excerpts of Microspherix's Preliminary Disclosure of Asserted Claims and Infringement Contentions Against Defendants, which was served on counsel of record on March 7, 2018.

15. Attached as Exhibit 14 to this Declaration is a true and correct copy of U.S. Patent No. 7,776,310 to Kaplan, issued August 17, 2010.

16. Attached as sealed Exhibit 15 to this Declaration is a true and correct copy of excerpts of Microspherix's Preliminary Responsive Validity Contentions, which was served on counsel of record on June 8, 2018.

17. Attached as sealed Exhibit 16 is the SDG Report No. 4678, dated October 1996 and bearing the bates range MRK\_00000027–266.

18. Attached as Exhibit 17 to this Declaration is a true and correct copy of excerpts from the 30th Edition of Dorland's Illustrated Medical Dictionary (2003) and bearing the bates range MRK\_00348537–539.

19. Attached as Exhibit 18 to this Declaration is a true and correct copy of excerpts from the 27th Edition of Stedman's Medical Dictionary (2000) and bearing the bates range MRK\_00348534–536.

20. Attached as Exhibit 19 to this Declaration is a true and correct copy of excerpts of the Patent Owner's Response in IPR2018-00402 (Paper 24), dated October 23, 2018.

21. Attached as Exhibit 20 to this Declaration is a true and correct copy of excerpts of the Patent Owner's Preliminary Response in IPR2018-00402 (Paper 8), dated May 7, 2018.

22. Attached as Exhibit 21 to this Declaration is a true and correct copy of excerpts of the Declaration of Dr. Patrick F. Kiser, Ph.D in IPR2018-00402 (Ex. 2001), dated May 7, 2018.

23. Attached as Exhibit 22 to this Declaration is a true and correct copy of excerpts of the Patent Owner's Response in IPR2018-00393 (Paper 24), dated October 23, 2018.

24. Attached as Exhibit 23 to this Declaration is a true and correct copy of excerpts of the Patent Owner's Sur-Reply in IPR2018-00393 (Paper 34), dated March 5, 2019.

25. Attached as Exhibit 24 to this Declaration is a true and correct copy of excerpts of the Record of Oral Hearing in IPR2018-00393 (Paper 42) held on April 8, 2019.

26. Attached as Exhibit 25 to this Declaration is a true and correct copy of excerpts of the Microspherix's Demonstratives for the April 8, 2019 Oral Hearing in IPR2018-00393 (Ex. 2153).

27. Attached as Exhibit 26 to this Declaration is a true and correct copy of excerpts of the Patent Owner's Preliminary Response in IPR2018-00393 (Paper 6), dated April 10, 2018.

28. Attached as Exhibit 27 to this Declaration is a true and correct copy of the Curriculum Vitae of Kinam Park, Ph.D.

29. Attached as Exhibit 28 to this Declaration is a true and correct copy of the article titled "Radiation Biology in Brachytherapy" by David J. Brenner from the *Journal of Surgical Oncology*, dated May 1997 and bearing the bates range MRK\_00344060–064.

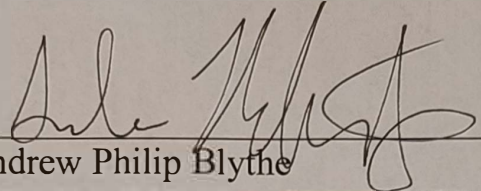
30. Attached as Exhibit 29 to this Declaration is a true and correct copy of the article titled "Brachytherapy as a treatment option for prostate cancer: overview and nursing considerations" by Judith Brumm, RN, CNOR, dated July 2000 and bearing the bates range MRK\_00344108–110.

31. Attached as Exhibit 30 to this Declaration is a true and correct copy of the Final Written Decision in IPR2018-00402 (Paper 44), dated July 8, 2019.

32. Attached as Exhibit 31 to this Declaration is a true and correct copy of the Final Written Decision in IPR2018-00602 (Paper 43), dated July 8, 2019.

33. Attached as Exhibit 32 to this Declaration is a true and correct copy of the Examiner's Search Strategy and Results, dated April 18, 2016, from the prosecution file of U.S. Patent Appl. No. 14/473,159, which issued as U.S. Patent No. 9,636,401.

Executed on October 29, 2020.

A handwritten signature in black ink, appearing to read "Andrew Blythe", written over a horizontal line.

Andrew Philip Blythe  
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